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August 16, 1996

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room #222
1919 M Street, N.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Re: In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States
IB Docket No. 96-111

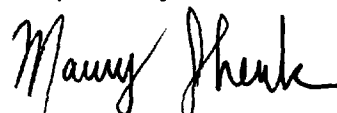
Dear Mr. Caton:

Enclosed for filing please find an original and five copies of the Reply Comments of Motorola Satellite Communications, Inc. and Iridium LLC in the above-referenced proceeding.

Also, enclosed please find one copy of this filing to be date stamped and returned with our messenger.

If there are any questions concerning this filing, please do not hesitate to contact us.

Respectfully submitted,



Alfred M. Mamlet
Maury D. Shenk

No. of Copies filed
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Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:

**Amendment of the Commission's
Regulatory Policies to Allow
Non-U.S.-Licensed Space Stations to
Provide Domestic and International
Satellite Service in the United States**

IB Docket No. 96-111

ORIGINAL

To: The Commission

**REPLY COMMENTS C.
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August 16, 1996

SUMMARY

Motorola Satellite Communications, Inc. ("Motorola") and Iridium LLC ("Iridium") strongly support an agreement in the World Trade Organization ("WTO") Group on Basic Telecommunications ("GBT") as the best means of securing market access for U.S.-licensed satellite service providers and ensuring maximum competition in the market for satellite services. An agreement in the GBT should be based upon commitments by a "critical mass" of countries to provide non-discriminatory market access. Motorola and Iridium remain optimistic that there will be enough improved offers to enable the GBT to reach an agreement by February 15, 1997, which will provide important market-opening benefits in the satellite services market for those countries that choose to open their markets.

The Commission is pursuing the same goals of market access and enhanced competition in the DISCO-II rulemaking as the Commission and Executive Branch are pursuing in the GBT. Commenters that suggest the Commission defer completely to the GBT negotiations and refrain from proceeding with DISCO-II ignore an essential point. The GBT negotiations were extended from an initial deadline of April 30, 1996 precisely because there was not a critical mass of market-opening offers. While Motorola and Iridium are optimistic that the additional negotiations will lead to such a critical mass, the United States cannot ignore the possibility that other countries may not be willing to commit to opening their national markets for satellite services, and that there ultimately may be no GBT agreement.

If there is a successful GBT agreement, then the essential goal of non-discriminatory market access in a critical mass of countries may be achieved even without application of a new U.S. entry standard for non-U.S.-licensed satellite systems. This is the objective for Motorola and Iridium. Nevertheless, the DISCO-II

rulemaking will both encourage market-opening offers in the GBT and provide appropriate standards for U.S. market entry if there is no GBT agreement.

Most commenters in DISCO-II have expressed broad agreement with the Commission's proposal for an effective competitive opportunities test for satellite services (the "ECO-Sat" test). Virtually all commenters in DISCO-II support the Commission's basic conclusion that a route-by-route ECO-Sat test is appropriate for fixed satellite services ("FSS") and direct-broadcast satellite services ("DBS"), but inappropriate for mobile satellite services ("MSS").

For global MSS, the proper market entry test is a global ECO-Sat test, based upon the critical mass standard articulated in the initial comments of Motorola and Iridium. This standard fully addresses the two primary concerns regarding critical mass raised by certain DISCO-II commenters: (1) that "critical mass" is insufficiently defined and (2) that it does not provide the right incentive for market access. Motorola and Iridium propose a standard that is well-defined and that encourages market access by focusing on the countries in which the owners of a non-U.S.-licensed system have influence over market access.

The alternatives to the global ECO-Sat test for MSS proposed by other commenters are not appropriate or sufficient substitutes for the global ECO-Sat test, because they fail to promote global market access for U.S.-licensed satellite systems. ICO Global Communications proposes to rely on telecommunications regulators in other countries to enforce a condition of "no special concessions" for market access on all MSS systems. Although this approach is based on principles of non-discrimination, it fails to provide incentives for opening of foreign MSS markets. Similarly, COMSAT Corporation's proposal to examine only the "effect on competition" in the U.S. market provides no incentives for opening of foreign markets and is entirely lacking in specifics. By focusing exclusively on the public interest factors of band sharing,

frequency coordination, and equipment compatibility, L/Q Licensee, Inc. and Loral Space and Communications Ltd. (collectively "Loral") also fail to suggest an alternative that encourages opening of foreign markets.

A few commenters in DISCO-II argue that the Commission's proposed ECO-Sat test impermissibly interferes with Executive Branch authority over international trade by conditioning U.S. market access on reciprocal conditions abroad. This argument fails because Section 308(c) of the Communications Act of 1934 explicitly authorizes the Commission to impose reciprocity conditions on radio licenses. The Commission has relied upon its reciprocity authority under Section 308(c) in both licensing and rulemaking proceedings. Furthermore, the Commission proposes in DISCO-II to defer to the Executive Branch on issues of foreign policy and trade.

The proposed global ECO-Sat test for MSS also does not discriminate against ICO Global, because ICO Global is not a U.S.-licensed satellite system and ICO Global has far more extensive national government ownership than the U.S.-licensed Big LEOs. It is appropriate for the Commission to apply a different licensing regime to non-U.S.-licensed satellite systems than to U.S.-licensed satellite systems because the Commission has far less control over the activities of a non-U.S.-licensed satellite system than over the activities of a U.S.-licensed satellite system. Furthermore, ICO Global has far greater influence with global telecommunications regulators than do Iridium, Globalstar, or Odyssey, because nearly all of the investors in ICO Global are national telecommunications regulators and/or government-owned service providers.

Numerous commenters in DISCO-II identify significant competitive risks posed by the intergovernmental satellite organizations ("IGOs"). COMSAT and Intelsat, however, disagree and seek a market entry test for the IGOs (and for their affiliates, subsidiaries, and successors) based upon a limited assessment of the "effect

on competition" in the United States. COMSAT also argues that the Commission's existing authorizations of IGO services should automatically transfer to their affiliates, subsidiaries, and successors. Motorola and Iridium disagree. These proposals would significantly extend the monopoly privileges and market power that the IGOs enjoy. The market entry standard applicable to the IGOs, and to their affiliates, subsidiaries, and successors, should incorporate the same test that is applicable to other non-U.S.-licensed satellite service providers -- for global MSS, the global ECO-Sat test based on critical mass -- and should also take into account as an additional important public interest factor the competitive effects of government ownership, IGO privileges, and market power.

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**Before the
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In the Matter of:

**Amendment of the Commission's
Regulatory Policies to Allow
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Provide Domestic and International
Satellite Service in the United States**

IB Docket No. 96-111

**REPLY COMMENTS OF
MOTOROLA SATELLITE COMMUNICATIONS, INC.
AND IRIDIUM LLC**

I. INTRODUCTION

Motorola Satellite Communications, Inc. ("Motorola") and Iridium LLC (formerly Iridium, Inc.) ("Iridium") submit these reply comments pursuant to 47 C.F.R. § 1.411, et seq., and the Commission's Notice of Proposed Rulemaking in this proceeding.^{1/}

Motorola and Iridium are seeking opening of world markets for global mobile satellite services ("MSS") primarily through a broad multilateral agreement in the World Trade Organization ("WTO") Group on Basic Telecommunications ("GBT"). The present rulemaking should proceed concurrently with the GBT negotiations, and the

^{1/} Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, FCC 96-210 (May 11, 1996) (Notice of Proposed Rulemaking) ("DISCO-II NPRM").

standards adopted in this rulemaking will be essential to encourage global open markets if there is no GBT agreement.

Section II of these reply comments discusses the important interaction between the GBT negotiations and this rulemaking proceeding.

Section III addresses the Commission's tentative conclusion that a global ECO-Sat test should be applied to all global MSS systems. Many commenters support the Commission's proposal on both legal and policy grounds. The global ECO-Sat test should be based upon the critical mass standard articulated in the initial comments of Motorola and Iridium.

Section IV addresses several miscellaneous issues raised by commenters in DISCO-II.

II. THE UNITED STATES SHOULD PURSUE GLOBAL MARKET ACCESS FOR SATELLITE SERVICES BOTH THROUGH THE WTO TELECOMMUNICATIONS NEGOTIATIONS AND THROUGH THE DISCO-II RULEMAKING

A broad multilateral agreement through the WTO is the best means of securing non-discriminatory access to all national markets for all qualified satellite services providers, including global MSS providers. Non-discriminatory access to all national markets will benefit consumers throughout the world by providing them with lower prices and a wide range of service offerings. Therefore, Motorola and Iridium strongly support a successful conclusion of the negotiations in the GBT, based upon an agreement by a "critical mass" of countries to provide non-discriminatory market access.

Motorola and Iridium remain optimistic that there will be enough improved offers and additional offers -- by comparison with the offers made as of the initial April 30, 1996 deadline for the WTO telecommunications negotiations -- to enable the GBT

to reach an agreement by February 15, 1997. Such an agreement would provide important market-opening benefits in the global MSS market for those countries that choose to open their national markets to these services.

The Commission is pursuing the same goals of market access and enhanced competition in the DISCO-II rulemaking:

We anticipate that . . . our policy . . . will facilitate much greater access to non-U.S. satellites, thus benefiting users within the United States. We will also encourage foreign governments to open their satellite communications markets, thereby enhancing competition in the global market for satellite services.^{2/}

The commenters have expressed broad agreement with these pro-competitive goals and with the Commission's proposal to implement the goals through an effective competitive opportunities test for satellite services (the "ECO-Sat" test).

A few commenters have suggested that the ECO-Sat test is inconsistent with the goals being pursued in the GBT negotiations.^{3/} In fact, the reverse is true. Although the multilateral negotiations in the GBT and the licensing regime proposed in DISCO-II involve very different procedures, both are paths to global market access for satellite services. The consideration and adoption of the ECO-Sat test should encourage market opening offers in the GBT by demonstrating the importance to the United States of global market access for satellites.

Moreover, those commenters who argue that the Commission must defer entirely to the GBT negotiations ignore the reality in the MSS market that many national markets remain closed to U.S.-licensed satellite systems. At the initial April 30, 1996

^{2/} DISCO-II NPRM ¶ 1.

^{3/} Comments of ICO Global Communications ("ICO Global Comments") at 16-21; Comments of L/Q Licensee, Inc. and Loral Space and Communications Ltd. ("Loral Comments") at 10-11; Comments of AirTouch ("AirTouch Comments") at 8-10; Comments of GE American Communications, Inc. ("GE Comments") at 5-8.

deadline for the WTO telecommunications negotiations, only the United States, most (but not all) of the European Union countries, Japan, Australia, New Zealand and Iceland had agreed to provide any meaningful market access for satellite services.^{4/} In order to promote the necessary opening of numerous other markets, the United States should employ all available tools, including the GBT negotiations and the present rulemaking proceeding.

Contrary to the unsupported claims of some commenters, there is no reason to believe that other countries will "retaliate" against the United States for adopting a reciprocity-based ECO-Sat test.^{5/} Indeed, the consequences of the Commission's adoption of the basic effective competitive opportunities ("ECO") test for international common carrier services in the Foreign Carrier Entry Order^{6/} are instructive. The Commission has thus far successfully applied the ECO test in a flexible manner to permit service by foreign carriers in the United States.^{7/} Furthermore, the quality of offers in the GBT with respect to basic international services

^{4/} The charts presented by ICO Global, purporting to demonstrate competition in global markets for terrestrial wireless services, underscore the limits on global market access. See ICO Global Comments at Exhibit B. It is implicit in ICO Global's reliance on conditions in the terrestrial wireless market that it is not now possible to show that the global MSS market is open.

^{5/} See ICO Global Comments at 36-37; Loral Comments at 12-13.

^{6/} Market Entry and Regulation of Foreign-Affiliate Entities, 11 FCC Rcd 3873 (1995) ("Foreign Carrier Entry Order").

^{7/} See, e.g., Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as Amended, 11 FCC Rcd 1850, 1865 (1996) (permitting acquisitions by Deutsche Telecom and France Telecom of 10% shares in Sprint and service by Sprint on U.S.-Germany and U.S.-France routes, based upon commitments of future effective competitive opportunities in Germany and France and upon public interest factor of benefits of foreign investment in Sprint); Telefónica Larga Distancia de Puerto Rico, Inc., File No. DA 96-927 (June 13, 1996) (authorizing U.S. affiliate of Telefónica de España to provide international services on all unaffiliated routes).

is far better than the quality of satellite services offers.^{9/} In sum, the Foreign Carrier Entry Order has effectively promoted increased competition in the U.S. market for international services and increased market access abroad, without prompting "retaliation" by foreign countries. The ECO-Sat test proposed in DISCO-II is very similar to the ECO test adopted in the Foreign Carrier Entry Order, and should have the same result.^{9/}

Motorola and Iridium agree with those commenters who suggest that, if there is a successful GBT agreement, the essential goal of market access in a critical mass of countries may be achieved even without application by the Commission of a new entry standard for non-U.S.-licensed satellite systems. However, this does not mean that the GBT negotiations and DISCO-II should not proceed on parallel tracks. Even if there is a GBT agreement, a U.S. market entry test for satellite services will be necessary with respect to those countries that are not members of the WTO (including potentially major telecommunications markets such as China and Russia). Furthermore, if there is no GBT agreement, the DISCO-II standards will be essential to encourage global market access in the majority of the world's countries that have not yet committed to opening their satellite services markets to competition.

^{9/} See Negotiating Group on Basic Telecommunications, Compilation of Schedules and List of Exemptions from Article II, WTO Doc. S/NGBT/W/12 (Apr. 30, 1996).

^{9/} The Commission in the Foreign Carrier Entry Order explicitly rejected the arguments that this test would violate "standstill" obligations or MFN obligations under the General Agreement on Trade in Services. See Foreign Carrier Entry Order, 11 FCC Rcd at 3965-66; cf. ICO Global Comments at 16-18, 20-21.

III. A GLOBAL ECO-SAT TEST FOR ALL GLOBAL MSS SYSTEMS, BASED ON PRINCIPLES OF CRITICAL MASS, IS PROPER ON BOTH LEGAL AND POLICY GROUNDS

The comments filed in DISCO-II strongly support the Commission's proposal for a global ECO-Sat test for global MSS, based on principles of critical mass. In particular, the critical mass standard proposed by Motorola and Iridium provides a reasoned, manageable basis for implementing the Commission's proposal.^{10/}

This section (1) analyzes the global ECO-Sat test in terms of the comments filed in DISCO-II, (2) explains the strengths and weaknesses of alternative market entry tests proposed by other commenters, (3) addresses the Commission's authority to adopt a market entry test based on reciprocity, (4) examines the claim of ICO Global Communications ("ICO Global") that the proposed global ECO-Sat test discriminates against it, and (5) considers certain comments on application of the ECO-Sat test to the intergovernmental satellite organizations ("IGOs").

A. The Comments In DISCO-II Demonstrate The Propriety Of A Global ECO-Sat Test For All Global MSS Providers, Based Upon The Approach To Critical Mass Proposed By Motorola And Iridium

There is broad agreement among most of the commenters in DISCO-II, and particularly among those commenters that operate and use U.S.-licensed satellite systems, that the Commission's basic proposal of a country-by-country home market/route market ECO-Sat test is appropriate in the markets for fixed satellite services ("FSS") and direct-broadcast satellite services ("DBS").^{11/}

^{10/} Comments of Motorola Satellite Communications, Inc. and Iridium, Inc. ("Motorola and Iridium Comments") at 32-35.

^{11/} See Comments of AT&T Corp. at 4-7 (FSS); Comments of PanAmSat Corporation at 2-3 (FSS); Comments of Orion Network Systems, Inc. at 6-12 (FSS); Comments of Columbia Communications Corporation ("Columbia Comments") at 11-13

(continued ...)

There is also agreement that the route-by-route ECO-Sat test is inappropriate in the MSS market because of the global nature of the market.^{12/} ICO Global states:

In the [DISCO-II NPRM], the Commission proposes a modified ECO-Sat test for MSS Specifically, the Commission proposes to replace the ECO-Sat route-by-route approach with a "critical mass" approach. Implicit in this proposal is a determination by the Commission that the route-by-route approach is inappropriate for MSS.

This determination is correct. MSS systems are designed to be global in nature, with the technical ability to provide service to all countries throughout the world.^{13/}

Similarly, AirTouch Communications, a major investor in the Globalstar system, states:

LEO satellite systems are inherently global in nature, and thus ill-suited to an analysis that focuses on a "home

^{11/} (... continued)

(FSS); Comments of WorldCom, Inc. ("WorldCom Comments") at 5-6 (FSS); MCI Comments at 5-12 (DBS); Comments of AlphaStar Television Network Inc. at 4-5 (DBS); Comments of DIRECTV, Inc., DIRECTV International, Inc., and Hughes Communications Galaxy, Inc. ("Hughes Comments") at 12 (all services); Comments of Home Box Office ("HBO Comments") at 12-17 (all services). A few operators and users of non-U.S.-licensed satellite systems oppose the route-by-route ECO-Sat test in the FSS and DBS markets by arguing that the ECO-Sat test should not be applied at all. See Comments of COMSAT Corporation ("COMSAT Comments") at 10-27 (INTELSAT and Inmarsat services); Comments of INTELSAT at 7-9 (INTELSAT services); Comments of Western Tele-Communications, Inc. at 7-10 (DBS); Comments of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. at 11-15 (FSS video transmission).

^{12/} With respect to future satellite services that are not easily categorized as FSS, MSS, or DBS, Motorola and Iridium agree with those commenters who contend that it is appropriate for the Commission to evaluate flexibly the form of the ECO-Sat test (i.e., route-by-route, critical mass, or other) applicable to those new services. See Comments of Teledesic Corporation ("Teledesic Comments") at 4-7 ("interactive broadband satellite services"); MCI Comments at 12-13 ("The Commission . . . should be aware that its service categories may need to change over time"); Columbia Comments at 13-14.

^{13/} ICO Global Comments at 22 (emphasis added).

market" or on a "route-by-route" analysis. Such a "bilateral" analysis would make no sense when applied to the global Big LEO systems. Indeed, given the need for a worldwide market in order to make these global systems viable, the concept of a single "home market" with the strongest financial interest is largely irrelevant.^{14/}

Motorola and Iridium, as well as TRW, the principal investor in the Odyssey system, and ORBCOMM, the operator of the only non-voice, non-geostationary "Little LEO" MSS system in operation, agree that the route-by-route ECO-Sat test is inappropriate to the global MSS market.^{15/}

The proper substitute in the global MSS market for the route-by-route ECO-Sat test is a global ECO-Sat test, based upon the Commission's proposal

to deal with MSS market access issues through simultaneous evaluation of effective competitive opportunities for MSS providers on a global or regional basis. Under such an approach, we would require that some "critical mass" of foreign markets be open to U.S. satellite operators before a non-U.S. MSS system could provide any service in the United States.^{16/}

This critical mass approach for MSS is supported by two of the three U.S.-licensed Big LEO MSS systems (Iridium and Odyssey), as well as by ORBCOMM.^{17/} Furthermore, to the extent other commenters raise objections regarding the Commission's critical mass proposal, the critical mass standard articulated by Motorola and Iridium fully addresses

^{14/} AirTouch Comments at 4; cf. Loral Comments at 24-25 (largest investor in Globalstar system stating that different analyses should apply to each satellite service).

^{15/} See Motorola and Iridium Comments at 20-31; Comments of TRW Inc. ("TRW Comments") at 14-16; see also Comments of ORBCOMM ("ORBCOMM Comments") at 2 ("[b]y their nature, LEO mobile satellite systems . . . are inherently global").

^{16/} DISCO-II NPRM ¶ 47 (original emphasis).

^{17/} See Motorola and Iridium Comments at 20-25; TRW Comments at 12-18; ORBCOMM Comments at 5 (supporting critical mass test in connection with competitive effects test for entry of IGOs competing with non-voice, non-geostationary "Little LEO" MSS system).

these parties' concerns. The two primary concerns raised by these commenters^{18/} are (1) that the concept of critical mass is inadequately defined,^{19/} and (2) that the critical mass test creates the wrong incentives for opening of foreign markets by imposing too many restrictions on access to the U.S. market.^{20/}

First, the definitional concern is an easy one. The Commission "seek[s] comment . . . on how to define the requisite 'critical mass' so as to combine the flexibility that is necessary for intelligent regulation with the certainty that is necessary for effective competition."^{21/} Motorola and Iridium have provided a detailed definition of "critical mass" that incorporates the goals of both flexibility and regulatory certainty.^{22/} The Commission should base the global ECO-Sat market entry test for MSS upon this definition.

Second, the standard proposed by Motorola and Iridium provides the right incentives for opening foreign markets by carefully defining the Commission's inquiry with respect to critical mass:

- the Commission would initially consider market access only in the home countries of the owners of the non-U.S.-licensed system seeking access to the U.S. market;
- market access in at least 80 percent of such countries, representing also at least 80 percent of the population of

^{18/} Certain commenters object more generally to the ECO-Sat test on grounds related to interference with the WTO telecommunication negotiations and the fact that the test incorporates principles of reciprocity. These general arguments are addressed in sections II and III.C of these reply comments.

^{19/} ICO Global Comments at 24-26; Hughes Comments at 13.

^{20/} ICO Global Comments at 26-27, 33-36; Hughes Comments at 13-14.

^{21/} DISCO-II NPRM ¶ 47.

^{22/} Motorola and Iridium Comments at 32-35.

such countries, would produce a presumption of critical mass; and

- the basic presumption of critical mass (or lack thereof) would be rebuttable, based upon consideration of all relevant factors.

This "80 percent/80 percent" test addresses the concern that market access restrictions in "even one country"^{23/} or a "handful of foreign countries"^{24/} would preclude U.S. market access for a non-U.S.-licensed satellite system. Furthermore, the limitation of the basic inquiry to home countries of owners of a non-U.S.-licensed MSS system addresses the concern that "countries that are not the home country to an MSS operator presumably will have no clear, direct interest in the level of access to the U.S. accorded non-U.S.-licensed MSS operators."^{25/} Investors in global MSS systems will have a clear, direct interest to obtain access to the U.S. market and therefore to encourage their home governments to provide non-discriminatory access to U.S.-licensed MSS systems.

In sum, the comments in this proceeding are fully consistent with adoption of the Commission's proposed global ECO-Sat test for the MSS market, based on the critical mass standard proposed by Motorola and Iridium.

B. The Alternative MSS Market Entry Tests Proposed By Other Commenters Are Not Appropriate Substitutes For A Global ECO-Sat Test

Several commenters in this proceeding have proposed alternatives to the global ECO-Sat test for U.S. market entry by non-U.S.-licensed MSS systems. While certain of these proposals are based on sound economic principles, none of them is an

^{23/} ICO Global Comments at 27.

^{24/} Hughes Comments at 13.

^{25/} ICO Global Comments at 35.

appropriate or sufficient substitute for the global ECO-Sat test proposed by the Commission. The most significant weakness of the alternative proposals is that they fail to promote the primary goal of "encourag[ing] foreign governments to open their satellite communications markets, thereby enhancing competition in the global market for satellite services."^{26/}

ICO Global argues that the Commission should encourage each national telecommunications regulator to apply to all MSS systems a broad version of the Commission's "no special concessions" condition -- i.e., a requirement that no satellite system licensed by that regulator seek market access in any country under conditions that disadvantage another satellite system.^{27/} Motorola and Iridium support this condition as consistent with the goal of non-discriminatory market access and agree that it may be appropriate to incorporate the condition in the WTO GBT negotiations, as suggested by ICO Global.^{28/} However, ICO Global is incorrect that "[i]f national regulators adopt a 'no special concession[s]' condition, there will be no need for further Commission action because its objectives as stated in the NPRM will have been met."^{29/}

ICO Global's approach fails to recognize that the "no special concessions" approach does not itself provide an incentive for opening of foreign markets. Apparently, the approach is based on the questionable assumption that if the United States leads in adopting a "no special concessions" condition in DISCO-II, other

^{26/} DISCO-II NPRM ¶ 1.

^{27/} See ICO Global Comments at 37-41. AirTouch takes a similar approach. See AirTouch Comments at 11-12 & n.20.

^{28/} See Motorola and Iridium Comments at 37-38 (supporting "no special concessions" condition); ICO Global Comments at 38; see also TRW Comments at 37-39 (supporting expansion of Commission's existing "no special concessions" condition).

^{29/} ICO Global Comments at 41.

countries will follow. In fact, ICO Global concedes that "some . . . administrations may lag in accepting or implementing a 'no special concessions' condition" ^{30/}

Accordingly, the "no special concessions" approach must be accompanied by adoption in DISCO-II of a global ECO-Sat test for MSS, in order to provide proper incentives for opening of foreign MSS markets.

COMSAT Corporation ("COMSAT") proposes that all MSS systems be subject to an "effect on competition" market entry test based on one of the alternatives that the Commission has proposed for U.S. domestic service by Intelsat and Inmarsat: ^{31/}

A final alternative might be to apply a much less structured standard that focuses directly on the competitive consequences of an IGO providing domestic service within the United States. Under such an approach, the Commission could simply ask whether the IGO, in light of its intergovernmental status and global dominance, would be in a position to diminish effective competition in the United States. This approach would provide a high degree of flexibility, but might not provide sufficient guidance to interested parties. ^{32/}

Motorola and Iridium agree that the competitive effects of the "intergovernmental status and global dominance" of an IGO is an important public interest consideration for an application by the IGO (or by an IGO affiliate or IGO successor) for service in the United States. However, the "effect on competition" test has significant shortcomings as a general MSS market entry test. As the Commission observes, the approach would "not provide sufficient guidance to interested parties." ^{33/} COMSAT's failure to offer

^{30/} Id.

^{31/} COMSAT Comments at 27-29.

^{32/} DISCO-II NPRM ¶ 68.

^{33/} Id.

specifics on how this approach would be applied stands in sharp contrast to Motorola's and Iridium's detailed definition of "critical mass."^{34/} Furthermore, by focusing solely on the U.S. market, the "effect on competition" test fails to recognize the importance for global MSS systems of global market access (which results, in particular, from the uniquely global nature of Big LEO MSS systems that allow global roaming); and it provides no incentives for opening of foreign MSS markets to these systems.

COMSAT also proposes that non-U.S.-licensed satellite systems should have the option of seeking a space system license from the Commission.^{35/} Motorola and Iridium agree. Applications for such licenses are already permissible under the Commission's rules.^{36/} However, as the Commission has observed, it would be redundant to require all non-U.S.-licensed satellite systems to obtain space system licenses.^{37/} To the extent that MSS systems choose to pursue the earth station licensing regime proposed in DISCO-II,^{38/} rather than pursuing the option COMSAT identifies, the global ECO-Sat proposed by the Commission should govern their applications.

L/Q Licensee, Inc. and Loral Space and Communications Ltd. (collectively "Loral") propose that an MSS market entry test should focus primarily on market entry barriers related to band sharing, frequency coordination, and equipment compatibility.^{39/} Motorola and Iridium agree that these issues are important public interest factors under

^{34/} See Motorola and Iridium Comments at 32-35.

^{35/} COMSAT Comments at 33-35.

^{36/} See 47 C.F.R. § 25.114.

^{37/} See DISCO-II NPRM ¶ 14.

^{38/} See id. ¶ 15.

^{39/} Loral Comments at 6-8.

the Commission's market entry test for non-U.S.-licensed MSS systems.^{40/}

Nevertheless, as is the case with the other alternative market access proposals discussed in this section, elimination of these barriers to market access would not address the central concern underlying the global ECO-Sat test -- i.e., the need for foreign telecommunications regulators to provide access to U.S.-licensed satellite systems on a non-discriminatory basis. It is essential that the Commission adopt the global ECO-Sat test to promote such market access.

C. The Commission Clearly Has The Authority To Implement An ECO-Sat Test That Is Based Upon Principles Of Reciprocity

A few commenters in DISCO-II argue that the Commission's proposed ECO-Sat test, which is based upon an evaluation of availability of effective competitive opportunities for U.S. satellite service providers in foreign countries, conflicts with Executive Branch authority by conditioning U.S. market access on reciprocal market access abroad.^{41/} This argument fails for several reasons. Most importantly, these commenters fail to acknowledge that Section 308(c) of the Communications Act of 1934, as amended, and the Commission's precedent explicitly authorize the imposition of reciprocity conditions on radio licenses. Within the bounds of Section 308(c) -- which the ECO-Sat test does not exceed -- the Commission has authority concurrent with that of the Executive Branch over international trade in telecommunications services.

^{40/} See Motorola and Iridium Comments at 35-37 (discussing the importance of spectrum allocation and availability as a public interest factor).

^{41/} See ICO Global Comments at 10-16; Hughes Comments at 8-9.

The Commission properly relies upon Section 308(c) as authority for the ECO-Sat test.^{42/} Section 308(c) provides that "[t]he Commission in granting any license . . . may impose any terms, conditions, or restrictions authorized" by the Submarine Cable Landing License Act ("SCLA").^{43/} The SCLA, in turn, authorizes the President to "withhold or revoke" a cable landing license in order to "assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries"^{44/} Thus, Section 308(c) allows the Commission to impose similar reciprocity conditions upon U.S. radio communication licensees. The Commission has relied upon this reciprocity authority under Section 308(c) in both licensing proceedings^{45/} and rulemaking proceedings.^{46/}

Despite this clear authority, ICO Global in its comments argues that the Commission's decisions in Regulatory Policies and International Telecommunications and Second Cable demonstrate that the Commission "lacks the authority to apply

^{42/} DISCO-II NPRM ¶ 7 (citing 47 U.S.C. § 308(c) and Submarine Cable Landing Act, Pub. L. No. 67-8, 42 Stat. 8 (1921)); see generally Motorola and Iridium Comments at 16-19.

^{43/} 47 U.S.C. § 308(c).

^{44/} 47 U.S.C. § 35.

^{45/} Century III Orlando, Florida, Inc. et al., 5 FCC Rcd 3150, 3155 (1990) (International Facilities Division) (using Section 308(c) to withhold authority from domestic earth station licensees to use the Canadian Anik satellite system); Eagle Uplink Corp. et al., 5 FCC Rcd 6671 (1990) (International Facilities Division) (same).

^{46/} See Regulatory Policies and International Telecommunications, 2 FCC Rcd 1022, 1029 n.78 (1987) (stating that Section 308(c) gave the Commission the authority to "apply the reciprocity standards of the CLLA to applications for a license to operate a radio station for communications between the U.S. and any foreign country"); Market Entry and Regulation of Foreign-Affiliated Entities, 10 FCC Rcd 5256, 5294 n.77 (1995) (stating that Section 308(c) authorized the Commission to consider reciprocal treatment when evaluating applications of common carrier licensees providing international services).

reciprocity standards. . . .^{47/} In fact, these decisions in no way undermine the Commission's reciprocity authority under Section 308(c) because they do not involve Title III authority.^{48/} Furthermore, in more recent decisions, such as the Foreign Carrier Entry Order and Regulation of International Accounting Rates, the Commission has asserted reciprocity authority even in the absence of an explicit statutory mandate.^{49/}

The public interest analysis proposed by the Commission in DISCO-II also avoids any possible conflict with the Executive Branch by explicitly incorporating deference to the Executive Branch on issues of foreign policy and trade:

Our public interest analysis would include factors such as the general significance of the proposed entry to the promotion of competition in the United States and the global satellite service market; issues of national security, law enforcement, **foreign policy, and trade on which we would defer to the Executive Branch**^{50/}

^{47/} ICO Global Comments at 12; see also Regulatory Policies and International Telecommunications, 4 FCC Rcd 7387 (1988); Amendment of Part 76 and 78 of the Commission's Rules to Adopt General Citizenship Requirements for Operation of Cable Television Systems and for Grant of Station Licensees in the Cable Television Relay Service ("Second Cable"), 77 F.C.C.2d 73 (1980).

^{48/} See Regulatory Policies and International Telecommunications, 4 FCC Rcd at 7412-13 (declining to adopt a reciprocity proposal for foreign-owned telecommunications service providers and equipment manufacturers under Section 214 of the Communications Act); Second Cable, 77 F.C.C.2d 73 (declining to adopt a reciprocity standard for foreign ownership of cable television systems).

^{49/} See Foreign Carrier Entry Order, 11 FCC Rcd at 3964 (citing Section 310(b)(4) and the Commission's mandate under Section 151 to promote the availability to U.S. consumers of a "rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges" as authority to impose the ECO test); Regulation of International Accounting Rates, 7 FCC Rcd 559, 560 (1991) ("[W]e will require an applicant seeking authorization . . . to resell international private lines to a particular country to demonstrate that the subject country affords resale opportunities equivalent to those available under U.S. law.").

^{50/} DISCO II at ¶ 48 (emphasis added).

In addressing the issue of reciprocity in the Foreign Carrier Entry proceeding, in which the explicit statutory authority of Section 308(c) was absent, the Executive Branch opined that the Commission's power to regulate competition in the United States was sufficient authority for adoption of the basic ECO test, which the Executive Branch viewed as "send[ing] an appropriate signal to encourage the liberalization of the global communications market."^{51/}

Moreover, numerous commenters in DISCO-II, including a major investor in each Big LEO MSS system, also support application of an ECO-Sat test based on reciprocity. Motorola and Iridium have addressed this issue at length in their comments and in these reply comments. Loral, the largest investor in the Globalstar system, states that "the Commission should take into consideration reciprocal competitive opportunities for U.S. satellite systems when reviewing applications for provision of service over non-U.S. systems."^{52/} TRW, the largest investor in the Odyssey system, "urges the Commission to require . . . that a 'critical mass' of the national markets of foreign investors with any level of direct or indirect financial interests in the system be open to such U.S. satellite systems before the system can provide any service in the United States."^{53/} Finally, Hughes Telecommunications and Space, a major investor in

^{51/} Foreign Carrier Entry Order, 11 FCC Rcd at 3963-64 (citing NTIA Comments at 15); see also id. ("Justice argues that the Commission has jurisdiction to adopt a market access test in furtherance of its general public interest mandate and in exercise of the specific authority granted in Section 310."); Reply Comments of the U.S. Department of Justice at 23, Foreign Carrier Entry, IB Docket No. 95-22 ("[T]he Department, in common with other concerned Executive Branch agencies represented in the comments filed by NTIA, has agreed that the Commission does have jurisdiction to act in this area. . . .").

^{52/} Loral Comments at 3.

^{53/} TRW Comments at 15 (original emphasis).